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No. 82-723

In the Supreme Court of the United States

OCTOBER TERM, 1982

MCCLATCHY NEWSPAPER, d/b/a
THE SACRAMENTO BEE,
Petitioner,

v.

CENTRAL VALLEY TYPOGRAPHICAL
UNION NO. 46, INTERNATIONAL
TYPOGRAPHICAL UNION,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

OPPOSITION TO PETITION

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QUESTION PRESENTED

Whether the Court below properly concluded, on the record before it, that an arbitration award made pursuant to a collective bargaining agreement constituted a permissible determination of the contract interpretation question presented to the arbitrator.

PARTIES TO THE PROCEEDING IN THE COURT BELOW

The parties to the proceeding in the Court below are named in the caption of this Opposition.

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OPINIONS BELOW

The opinion of the Court below is reported at 686 F.2d 731. The opinion and the order amending the opinion and denying the petitions for rehearing are reproduced as appendices to the Petition.

The judgment of the United States District Court for the Eastern District of California and the bench decision of that Court are not officially reported. The judgment is reproduced as an appendix to the Petition. The bench decision, in which the Court explained the grounds for the judgment, is reproduced as an appendix to this Opposition.

JURISDICTION

The Petition for Writ of Certiorari was timely filed in this Court on October 22, 1982, the petitions for rehearing in the Court below having been denied on September 22, 1982. This Court has jurisdiction under 28 U.S.C. Section 1254(1).

STATUTE INVOLVED

The statute under which the district court and the court below were authorized to review the arbitration award in this case is Section 301 of the National Labor Relations Act, as amended (29 U.S.C. Section 185), and is reproduced as an appendix to the Petition.

STATEMENT OF THE CASE

Petitioner and Respondent, hereafter referred to as the Union, have had a long collective bargaining relationship covering Petitioner's composing room employees at the Sacramento Bee, a metropolitan daily newspaper. In 1973, when Petitioner instituted a program to convert its composing room from traditional "hot metal" printing to a modern photocomposition technique, the parties entered into an agreement which, insofar as is relevant here, provided for lifetime guaranteed jobs to a certain number of composing room employees. The guarantee, however, was subject to specified qualifications, such as retirement, resignation, death, permanent disability, and discharge for cause. In addition, and of particular importance in this case, the agreement provided:

> "In the case of a strike or lockout, such employment guarantee shall immediately cease and continuance of this Agreement will be contingent upon the terms of a negotiated strike or lockout settlement."

On April 17, 1978, a different labor organization which represented a number of Petitioner's employees, Sacramento Mailers Union Local 31, instituted a strike for a new contract. A substantial number of the Union's members honored the picket line and remained off the job. The Union encouraged its members not to work during the strike.

During the course of the Mailers' strike, a dispute arose between the parties as to whether the Union's members who honored the Mailers' picket lines had forfeited their lifetime job guarantees. The controversy was submitted to an arbitrator pursuant to the grievance provisions of the collective bargaining agreement then in effect between the parties. The issue presented to the arbitrator was phrased as follows:

> "Whether the job guarantees provided in paragraph 1 of the 1973 Memorandum Agreement between the Sacramento Bee and Central Valley Typographical Union No. 46 ceased for any or all of the employees covered by that Agreement by reason of the strike which began on April 17, 1978."

The arbitrator's decision was issued on August 10, 1979 (Pet. App.D). As shown in the decision, the controversy between the parties centered on the question of whether a "strike" which would bring about forfeiture of the job guarantees under the 1973 agreement included the action of the Union's members in honoring the picket lines of another striking union. After a full discussion of the background facts and the respective positions of the parties, the arbitrator's decision concludes that the contractual term "strike" is limited to a primary strike, i.e., a strike by the contracting union, and that the job guarantees of the Union's members who honored the picket lines of the Mailers' Union were not terminated (Pet. App.D, p.24).

The interpretation given to the contractual language by the arbitrator was grounded principally upon "[t]he combined reference to a 'strike' and a 'negotiated' settlement" in the agreement (Pet. App.D, p.20). The arbitrator reasoned that the interrelationship between these terms "clearly implies a primary strike in which the terms of a collective bargaining agreement are in dispute" (*ibid.*). The arbitrator noted that Petitioner had not adduced any evidence that a contrary meaning was intended by the parties (*id.* p.23). On the contrary, the decision points out that during the negotiation of the 1973 agreement, there were references by the parties which "clearly related to a primary strike, but did not clearly relate to the honoring of a picket line of another union" (*ibid.*).

The instant proceeding was initiated by the filing of a petition to vacate the arbitration award in the United States District Court for the Eastern District of California. The Union counterclaimed for confirmation of the award, and the matter was submitted upon cross motions for summary judgment.

The district court announced its decision from the bench at the hearing upon the cross motions. Although observing that judicial review of arbitration awards is of limited scope, the court indicated its independent agreement with the arbitrator's interpretation of the critical contract language. In discussing the question, the court referred to the arbitrator's decision as "the logical interpretation", and added that "this court is greatly persuaded that . . . where in fact the Union honored the lawful picket line of the Mailer's Union, this did not constitute a strike and was not in violation of what I can refer to as the no-strike provision of the . . . Agreement" (App. p. 7). A judgment confirming the award was issued (Pet. App.C).

The court below affirmed the district court's judgment. Noting the restricted scope of review which is applicable to proceedings to vacate arbitration awards issued under collective bargaining agreements, the opinion of the Ninth Circuit explains its decision in the following paragraph (Pet.App.A, p.4-5):

> The Publisher argues that the arbitrator exceeded his powers when he interpreted the term "strike" to encompass only primary strikes. We disagree. The arbitrator's interpretation of the term was essential to his resolution of the issue submitted to him. By empowering the arbitrator to decide whether the job guarantees ceased by reason of the April 17, 1978, strike, the publisher implicitly agreed to have the arbitrator interpret the scope of the words "strike or lockout" in the Scanner Agreement. The publisher also argues that the award does not draw its essence from the Scanner Agreement. We again disagree. The arbitrator's award "represents a plausible interpretation of the contract." *Riverboat Casino, Inc. v. Local Joint Executive Board,* 578 F.2d 250, 251 (9th Cir. 1978), quoting *Holly Sugar Corp. v. Distillery Union,* 412 F.2d 899, 903 (9th Cir. 1969).[1]

REASONS FOR DENYING THE PETITION

The Petition does not present a question which warrants determination by this Court. The underlying arbitration award which Petitioner contends to constitute an incorrect interpretation of a collective bargaining agreement was issued on the basis of uncontested facts and upon a full

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1. As stated in the Petition (p.6, n.1), the court below also reversed the district court's decision on a separate question, namely, whether the district court had jurisdiction following the appeal from the judgment confirming the arbitration award to amend its judgment and provide for additional relief. No question is presented to this Court concerning the amended judgment of the district court.

statement of the arbitrator's reasons. Both the district court and the court below expressly followed the well established guidelines of this Court in respect to the review to be given arbitration awards in labor agreements. The arbitrator decided the question submitted to him, and two courts have found that the decision was well within his arbitral authority. As we show below, this case involves no more than a conventional application of the review standard pertaining to arbitration awards which is stated in *United Steelworkers v. Enterprise Corp.*, 363 U.S. 593 (1960).

1. Contrary to the suggestion made in the Petition (pp. 9-11), the decision below does not conflict with decisions of other circuits relating to the proper standard of judicial review of arbitration awards. Petitioner argues that other circuits have adopted a rule which requires reviewing courts to analyze arbitration decisions for internal consistency, and to vacate an award upon finding that an arbitrator "has ignored his express factual findings" (Pet.p.9). The decisions cited by the Petition, however, establish no such rule.[2] On the contrary, each is a case in which the arbitrator failed to comply with an express contractual limitation upon his remedial authority. The opinions in these cases are expressly premised upon that consideration, which is of course an established basis for refusing enforcement of an award. *United Steelworkers v. Enterprise Corp.*, 363 U.S. 593, 597-598 (1960). None of the decisions stand for the proposition, as asserted by Petitioner, that a reviewing court must ex-

2. The decisions referred to in the text, cited at pages 9 and 10 in the Petition, are: *International Brotherhood of Firemen and Oilers, Local No. 935-B v. The Nestle Company*, 630 F.2d 474 (C.A.6, 1980); *Monongohela Power Co. v. Local No. 2332, IBEW*, 566 F.2d 1196 (C.A.4, 1976); *Truck Drivers Local 784 v. Ulry-Talbert Co.*, 330 F.2d 562 (C.A.8, 1964); and *International Union of Operating Engineers Local 670, v. Kerr-McGee Refining Corp.*, 618 F.2d 657 (C.A.10, 1980).

amine the arbitration record to find evidentiary support for an arbitrator's findings and approve the logic of his reasoning as a condition to enforcing his award.

There is no question in the present case pertaining to a contractual limitation on the arbitrator to decide the dispute which was submitted to him. The narrow disagreement between the parties was whether the contractual term "strike" was intended to mean only a primary strike, or whether it was intended to include a refusal to work in order to honor picket lines of another striking union. Both the submission agreement in the arbitration proceeding and the grievance provisions of the underlying collective bargaining agreement authorized the arbitrator to resolve this disagreement, and that is all he did. Enforcement of his award is accordingly completely consistent with decisions which vacate awards which exceed the contractual authority of an arbitrator. The asserted conflict simply doesn't exist.

2. Petitioner argues that the correct standard for courts to apply in cases involving the validity of an arbitration award is one which "requires a rigorous examination of the arbitration decision" to ascertain whether there is consistency between the award and underlying findings, and whether there is evidentiary support for the findings (Pet. p. 9, 10-14). Apart from the fact that this question, as we show below, is not presented in this case, the contention is at odds with this Court's decision in *United Steelworkers v. Enterprise Corp.*, 363 U.S. 593 (1960). As the Court there pointed out, "Arbitrators have no obligation to the court to give their reasons for an award." 363 U.S. at 598. Petitioner's argument of course presupposes that arbitrators have precisely that obligation, embellished with the further obligation to make factual findings and state reasoning which will withstand judicial scrutiny. It was just this kind

of approach to arbitration awards which this Court noted, in *United Steelworkers v. Enterprise Corp., supra,* "would require courts, even under the standard arbitration clause, to review the merits of every construction of the contract" 363 U.S. at 598-599. As the Court added (363 U.S. at 599):

> "This plenary review by a court of the merits would make meaningless the provisions that the arbitrator's decision is final, for in reality it would almost never be final... It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his."

For a discussion of whether factual findings in arbitration awards are required, see *Virgin Island Nursing Association v. Schneider,* 668 F.2d 221 (C.A.3, 1981).

3. In any event, this case scarcely presents an appropriate occasion for a redefinition of the scope of judicial review of arbitration awards. All that is involved is a question of contract interpretation in a context of facts which are uncontested. As we have stated, the matter was submitted to the district court upon cross motions for summary judgment. Apart from the language of the agreement which was in dispute, there was very little in the record before the arbitrator of a factual nature that bore upon the question of interpretation.

The only evidence to which the Petition points in its attempt to characterize the question in this case as one involving a lack of evidentiary support for an arbitrator's findings is testimony concerning the 1978 contract negotiations, some five years after the relevant agreement was executed. The reference is to the fact that in discussions preceding the strike of the Mailers Union, representatives

of the Union remained silent in the face of statements by Petitioner's representatives that employees would lose their lifetime jobs if they honored a Mailers Union picket line. The arbitrator concluded that the silence of the Union representatives did not "amount to agreement with the company's stated position" (Pet. App.D, p.23) for several reasons. First, the Union members were at that time working under an expired contract which did not provide protection for employees who honor a picket line. There was apprehension that a refusal to cross the picket line of the Mailers Union might be "just cause" for discharge, which would constitute an independent reason for termination of the job guarantees. In addition, as noted by the arbitrator, there was uncertainty at the time "whether any or all, of the unions involved might strike over terms of the new Agreement" (Pet. App.D, p.22). The arbitrator found that rather than conceding to Petitioner's argument, the silence of the Union's representatives reflected simply a disinclination "to argue with the company" *(ibid.)*.

On the basis of this testimonial evaluation, Petitioner argues somewhat inconsistently that the arbitrator has "ignored his own factual findings of the parties' mutual intent" (Pet. p.11), and that the arbitrator's interpretation of the agreement is "without any factual support" (Pet. 16). Neither assertion is valid. First, the arbitrator did not find that the Union acceded to Petitioner's position by its silence during the 1978 negotiations. Rather, the finding on this point is that the Union representatives remained silent because they did not want to argue, not because they agreed with their employer. Second, this is not a case in which there is an absence of evidence to support the interpretation which the arbitrator gave to the contract. The arbitrator's

interpretation was based on his reading of the contract language, having found that there was very little else to guide him.

The result is that Petitioner has ascribed to the court below a position on the scope of review in arbitration cases which is neither expressed in the court's opinion nor required by the record before it. The arbitration award in this case would have to be sustained no matter how plenary the scope of judicial review to which it might be subjected. In short, Petitioner requests this Court to review a question which is simply not presented either by the record in this case nor by the decision of the court below.

CONCLUSION

For the reasons stated, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

November 1982.

BEESON, TAYER & SILBERT
DUANE B. BEESON
Attorneys for Respondent

Appendix

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE RAUL A. RAMIREZ,
JUDGE

Civil NO. S-79-814-RAR

McClatchy Newspapers, d/b/a
The Sacramento Bee, a California
corporation,
Plaintiff,

vs.

Central Valley Typographical
Union No. 46 International
Typographical Union,
Defendant.

REPORTER'S TRANSCRIPT

CROSS MOTIONS FOR
SUMMARY JUDGMENT

NOVEMBER 24, 1980

APPEARANCES:

CIVIL NO. S-79-814-RAR:

For the Plaintiff:

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TICHY
A Professional Corporation
By MARK ROSS, Esq.
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For the Defendant:

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100 Bush Street, Suite 1500
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Sacramento, California
Monday, November 24, 1980

THE CLERK: Civil S-79-814, McClatchy Newspaper versus Typographical Union, cross-motions for summary judgment.

MR. ROSS: Your Honor, the same law firm and same attorney appearing in behalf of McClatchy.

THE COURT: All right. Mr. Ross.

For the Union?

MR. BEESON: For the Union, the firm of Beeson, Tayer, Kovach & Silbert, Duane Beeson, for defendants.

THE COURT: As indicated, this matter is on today's calendar for cross-motions for summary judgment.

Counsel, would you like to be heard?

MR. ROSS: Well, Your Honor, I think our papers make our position very clear and we'd be willing to submit it on the basis of those papers.

THE COURT: Mr. Beeson?

MR. BEESON: Unless Your Honor has questions, I think that the papers are comprehensive in their treatment of this matter.

THE COURT: All right. Since counsel has given the Court some latitude, at least for the record, since I presume there are interested parties, let me at least give a brief rundown of what is before the Court. It appears from the papers on file that this ligitation arises out of a strike at

The Sacramento Bee in April of '78. In the early seventies, The Sacramento Bee, as I understand it, was in the process of changing from what is known as hot metal printing to a cold-type printing system. Changing, of course, from the old type machines to the more modern comupter-type centers. In the changeover, several members of the defendant Union became, to use the word very politely, expendable in terms of employment. I presume the basis for the agreement was to protect these expendable employees.

The plaintiff and defendant entered into an agreement giving these certain named employees certain job protections. For lack of a more appropriate term, I will refer to it as the "Scanner Agreement." Of course, counsel, feel free to interrupt me if I've interpreted something in error.

In essence, the Scanner Agreement indicated that these certain employees would not lose their jobs, would be protected to a certain extent, if, in fact, and as long and until the Union went out on strike, and of course, the most important term and the statement just made by the Court was the term "strike," and its meaning in the literal as well as figurative sense.

The agreement was executed, and I presume there were no other problems, none that the Court is to be concerned with, until and about April of—I believe it was April of '78, when the Mailers who were without a contract went out on strike. The defendant Union honored the mailers' picket lines, refused to cross the picket lines, and subsequently, was informed by the plaintiff—I'll refer to the plaintiff continuously as "The Bee" as opposed to McClatchy—The Bee indicated and informed the defendant Union that it considered the Union to be out on strike as that term was used and meant to be used in the Scanner Agreement. That as such, the employees who had been previously protected

under the Scanner Agreement were to lose their job protection. The Union, of course, took up some disagreement with The Bee's interpretation of the term "strike." The matter was submitted to arbitration in accordance with the Collective Bargaining Agreement and by way of written opinion, the arbitrator found that the word quote strike end quote as used in the Scanner Agreement referred to a primary strike and not to what I will refer to, for lack of a better term, as a sympathy strike, and that as such, the refusal to cross picket lines did not constitute a strike and therefore, the Scanner Agreement should be enforced and that those employees should regain the protection that they initially sought and initially were granted under the agreement.

The Plaintiffs thereafter brought this present action seeking to vacate the award of the arbitrator on the grounds, first, that the arbitrator had exceeded his authority accorded to him by the parties under the agreement; that his award, in fact, failed to draw its essence from the Collective Bargaining Agreement.

Secondly, that the arbitrator was guilty of misconduct in refusing to hear evidence pertinent and material to the controversy submitted by the parties. Obviously, the Court has jurisdiction under the matter under 301 of the Labor Management Relations Act, and obviously, without going into some detail, since counsel has been here before, the parties are aware of the limited policies of this Court in interfering with the actions of the arbitrator, save and except where it has been demonstrated that, in fact, the award of the arbitrator fails to draw essence from the meaning of the agreement and/or has exceeded its bounds or has been guilty of some misconduct, such as failing to hear evidence that might be dispositive of the case or having

some conflict of interest that perhaps was not apparent on the record.

I am concerning myself, gentlemen, more or less with the allegation that the arbitrator in his award failed to draw essence from the parties' Collective Bargaining Agreement.

The parties have submitted the matter. Therefore, without further ado, in reviewing the various and voluminous cases in the Ninth Circuit, obviously, the Court will uphold the arbitrator's award if, in fact, that award represents a plausible interpretation of the parties' contract in the context of the parties' conduct. The agreement that I am faced with today indicates that:

> "In case of a strike or lockout, such employment guarantee shall immediately cease in continuance of this agreement"—
>
> Referring, of course, to the Scanner Agreement—
>
> "—will be contingent upon the terms of a negotiated strike or lockout settlement."

The arbitrator, of course, as I've indicated, interpreted this language to mean that the Union would lose the Scanner Agreement protections if, in fact, the Union itself went out on strike, and based his interpretation upon the phrase, I presume, "Upon the terms of a negotiated strike and/or settlement." Meaning that, obviously, a person cannot settle something unless they actually went out on strike seeking something. Therefore, the arbitrator found that the sympathy strike did not purport and did not conform to the word "strike" as used in the agreement and ordered the employees to maintain the protection that they had previously had.

I was concerned, gentlemen, with the interpretation of the word "strike." Justice Douglas, as you are well aware,

in his numerous decisions in this area, always felt that these matters were best left to the so-called experts. Persons who are in the field, who have had more years than this Court probably deems to live in the field, has had daily contact with both parties, is aware of the contact of the parties, the meanings that are given to certain terms of the parties, and I think it is for that specific reason that the Ninth Circuit has followed most of the circuits in the finding that the award of the arbitrator will always be upheld if it represents a plausible interpretation of the parties' contract. Why? Because the arbitrator is in a better position to define and understand the terms of the contract as opposed to the Court who is usually faced with a cold, black and white lettering of a contract which may have hundreds of interpretations, depending upon the ability of the attorney arguing before the Court, the background, be it limited or otherwise, of the Court in interpreting contracts, and the hundreds of thousands of case law, all that define white as being black and black as being white and doesn't really give assistance to the Court.

However, I believe in this case, I am not left hanging on the limb. I believe that the award of the arbitrator does, in fact, draw essence from the meaning of the term "strike" as used in the Scanner Agreement. I believe that the logical interpretation is upheld and is specifically shown by other case law. Specifically, I have in mind the case of David O'Riley versus National Labor Relations Board, which is a 1975 Ninth Circuit opinion at 510 Fed 2d, 428. It, in fact, interpreted and was faced with the definition of the term "strike" and the Court of Appeals held that the no strike provisions of a Collective Bargaining Agreement had no application to honoring a sister union's lawful picket line, or to put it in plain English, where one union honored the

sister union's lawful picket line, this did not violate the no-strike provisions of the Collective Bargaining Agreement.

Applying that rationale to the opinion and the decision of the arbitrator, this Court is greatly persuaded that, likewise, here, where in fact the Union honored the lawful picket line of the Mailer's Union, this did not constitute a strike and was not in violation of what I can refer to as the no-strike provision of the Scanner Agreement.

For that reason, the Court does find, number one, that the award of the arbitrator does, in fact, draw its essence from the parties' Collective Bargaining Agreement.

Number two, in reviewing the allegations made that, in fact, the arbitrator was guilty of misconduct in refusing to hear evidence pertinent and material to the controversy, the Court is not satisfied that there was such misconduct. The Court does not feel that it has been provided with sufficient evidence to demonstrate, one, the type of new evidence that would be admitted. Two, what affect the so-called new evidence would have. Three, I'm not satisfied that, in fact, there has even been a timely and proper allegation that such new evidence exists.

For this reason and all other reasons as more particularly stated, the motion of the plaintiff for summary judgment, that is, of McClatchy, is denied. The motion for summary judgment on behalf of the Typographical Union and the Union in its entirety will be granted. The Court does affirm the award of the arbitrator's decision in its entirety.

I would ask Mr. Beeson on behalf of the Union to please be so kind as to prepare the order in accordance with the Court's finding.

Thank you very much, gentlemen.

MR. BEESON: Do you wish separate findings of fact and conclusions of law prepared or will a statement from the bench be sufficient?

THE COURT: I believe the statement from the bench is sufficient, since I'm dealing with cross-motions for summary judgment. I don't feel that the Federal Rules of Civil Procedure require either an opinion and/or the necessary findings, since it is under specific ruling of summary judgment.

As indicated, the motion on behalf of the plaintiff is denied. For the defendant, granted. The award of the arbitrator is affirmed.

MR. ROSS: Thank you, Your Honor.

MR. BEESON: Thank you very much.

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA }
COUNTY OF SACRAMENTO } ss.

This is to certify that I was present in court as Official Court Reporter during the proceedings had in the before-entitled case on Monday, November 24, 1980 and Monday, November 24, 1980; that I reported in shorthand the proceedings had in said matter, and thereafter reduced my shorthand notes so taken to typewriting and the foregoing pages 4 to 37, inclusive, contain a full, true and correct statement and record of said proceedings.

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, this 29th day of December, 1980.

AMANDA VINE
AMANDA VINE
Certified Shorthand Reporter
